

IP 02-0136-CR 1 T/F USA v Jackson
Magistrate Kennard P. Foster

Signed on 3/14/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CURTIS HUGH JACKSON,)

Defendant.)

Cause No. IP 02-136-CR-01 (T/F)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 02-136-CR-01 (T/F)
)	
CURTIS HUGH JACKSON,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on February 28, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on February 27, 2006, and to submit to Judge Tinder on proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings regarding this matter were held on March 14, 2006, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Jackson appeared in person and his appointed counsel, Jim McKinley, Office of the Indiana Federal Community Defender’s Office. The government appeared by Sue Dowd, Assistant United States Attorney. U. S. Parole and Probation appeared by Jay Hardy, U. S. Parole and Probation Officer, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That Jim McKinley, Office of the Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Jackson in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Jackson and his counsel who informed the Court they had read and understood the specifications of violation charged herein and waived further reading thereof.

3. That Mr. Jackson was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Jackson would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Jackson had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Jackson had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered on February 28, 2006.

7. Mr. Jackson stated his readiness to waive the preliminary hearing. Mr. Jackson then waived, in writing, the preliminary hearing and he was held to answer.

8. Mr. Jackson, by counsel, stipulated that he admitted the specified violations of his supervised release, as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed on February 27, 2006, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.”</p> <p>On February 1, 2006, Mr. Jackson submitted a urine sample for mandatory drug testing. The sample tested positive for cocaine. On February 14, 2006, Kroll Laboratories confirmed the results. On February 7, 2006, Mr. Jackson voluntarily submitted a urine sample which tested negative. He was drug tested on two other occasions in January 2006 as a part of mandatory drug testing. Both samples tested negative. On February 7, 2006, Mr. Jackson was confronted regarding the positive test and he denied that he used cocaine. On the same date Mr. Jackson was given the opportunity voluntarily modify his conditions of supervised release to include drug testing. He declined to do so.</p>

Mr. McKinley stated that the defendant had no basis to resist the positive testing result as alleged in the Petition.

Counsel for the parties further stipulated the following:

- 1) Mr. Jackson had no basis to resist the positive testing result as alleged in the Petition.
- 2) The appropriate disposition for Mr. Jackson’s violation of the conditions of supervised release is **MODIFICATION** of his conditions of release to add the following condition:
 - (a) Defendant will submit to mandatory random testing for controlled substances.

The Court inquired directly of the defendant if he had any basis to resist the positive result and he stated he did not. Based on the defendant’s inability to resist the positive drug testing result

as set forth in the Petition and the agreement of the parties to modify the conditions of release to now include mandatory drug testing, the Magistrate Judge finds there was a positive test result on February 1, 2006.

The Court, having heard the admissions of the defendant and the stipulations of parties and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **MODIFIED** and Curtis Hugh Jackson's supervised release shall continue as previously set, with the following modifications:

(1) He will submit to mandatory random drug testing.

WHEREFORE, Mr. Jackson's supervised release is **MODIFIED** as set forth above.

Counsel for the parties and Mr. Jackson stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation modifying Mr. Jackson's supervised release.

The Magistrate Judge requests that Jay Hardy, U. S. Parole and Probation officer, prepare for submission to the Honorable John Daniel Tinder, Judge, as soon as practicable, a modified supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

IT IS SO RECOMMENDED this 14th day of March, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court

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U. S. Parole and Probation

U. S. Marshal Service